

each of the fiscal years 1985 through 1988 to carry out the purposes of this subchapter.

(Pub. L. 89-272, title II, §5006, as added Pub. L. 96-482, §31(f)(1), Oct. 21, 1980, 94 Stat. 2353; amended Pub. L. 98-616, §2(h), Nov. 8, 1984, 98 Stat. 3223.)

AMENDMENTS

1984—Pub. L. 98-616 authorized appropriation of \$1,500,000 for each of fiscal years 1985 through 1988.

SUBCHAPTER VI—FEDERAL RESPONSIBILITIES

§ 6961. Application of Federal, State, and local law to Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local solid waste or hazardous waste regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local solid or hazardous waste law with respect to any

act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State solid or hazardous waste law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Administrative enforcement actions

(1) The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this chapter. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action would be initiated against another person. Any voluntary resolution or settlement of such an action shall be set forth in a consent order.

(2) No administrative order issued to such a department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.

(c) Limitation on State use of funds collected from Federal Government

Unless a State law in effect on October 6, 1992, or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(Pub. L. 89-272, title II, §6001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2821; amended Pub. L. 95-609, §7(m), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 102-386, title I, §102(a), (b), Oct. 6, 1992, 106 Stat. 1505, 1506.)

AMENDMENTS

1992—Pub. L. 102-386 designated existing provisions as subsec. (a), inserted heading, inserted in first sentence

“and management” before “in the same manner”, inserted second to fourth, sixth, and seventh sentences specifying Federal, State, interstate, and local substantive and procedural requirements, waiving sovereign immunity, determining reasonable service charges, and providing no agent, employee, or officer of the United States be personally liable for a civil penalty for an act or omission within the scope of official duties but be subject to criminal sanction, with no department, agency, or instrumentality of the executive, legislative, or judicial branch subject to such sanction, and added subsecs. (b) and (c).

1978—Pub. L. 95-609 inserted “or management” after “disposal” in cl. (2).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 102(c) of Pub. L. 102-386 provided that:

“(1) IN GENERAL.—Except as otherwise provided in paragraphs (2) and (3), the amendments made by subsection (a) [amending this section] shall take effect upon the date of the enactment of this Act [Oct. 6, 1992].

“(2) DELAYED EFFECTIVE DATE FOR CERTAIN MIXED WASTE.—Until the date that is 3 years after the date of the enactment of this Act, the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act [subsec. (a) of this section] with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall not apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act [42 U.S.C. 6924(j)] involving storage of mixed waste that is not subject to an existing agreement, permit, or administrative or judicial order, so long as such waste is managed in compliance with all other applicable requirements.

“(3) EFFECTIVE DATE FOR CERTAIN MIXED WASTE.—(A) Except as provided in subparagraph (B), after the date that is 3 years after the date of the enactment of this Act, the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act involving storage of mixed waste.

“(B) With respect to the Department of Energy, the waiver of sovereign immunity referred to in subparagraph (A) shall not apply after the date that is 3 years after the date of the enactment of this Act for violations of section 3004(j) of such Act involving storage of mixed waste, so long as the Department of Energy is in compliance with both—

“(i) a plan that has been submitted and approved pursuant to section 3021(b) of the Solid Waste Disposal Act [42 U.S.C. 6939c(b)] and which is in effect; and

“(ii) an order requiring compliance with such plan which has been issued pursuant to such section 3021(b) and which is in effect.

“(4) APPLICATION OF WAIVER TO AGREEMENTS AND ORDERS.—The waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act (as added by the amendments made by subsection (a)) shall take effect on the date of the enactment of this Act with respect to any agreement, permit, or administrative or judicial order existing on such date of enactment (and any subsequent modifications to such an agreement, permit, or order), including, without limitation, any provision of an agreement, permit, or order that addresses compliance with section 3004(j) of such Act with respect to mixed waste.

“(5) AGREEMENT OR ORDER.—Except as provided in paragraph (4), nothing in this Act [see Short Title of 1992 Amendment note set out under section 6901 of this title] shall be construed to alter, modify, or change in any manner any agreement, permit, or administrative

or judicial order, including, without limitation, any provision of an agreement, permit, or order—

“(i) that addresses compliance with section 3004(j) of the Solid Waste Disposal Act with respect to mixed waste;

“(ii) that is in effect on the date of enactment of this Act; and

“(iii) to which a department, agency, or instrumentality of the executive branch of the Federal Government is a party.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 20 of House Document No. 103-7.

EXECUTIVE ORDER NO. 12780

Ex. Ord. No. 12780, Oct. 31, 1991, 56 F.R. 56289, which required Federal agencies to promote cost-effective waste reduction and recycling of reusable materials and established a Council on Federal Recycling and Procurement Policy, was revoked by Ex. Ord. No. 12873, § 901, Oct. 20, 1993, 58 F.R. 54911, formerly set out below.

EXECUTIVE ORDER NO. 12873

Ex. Ord. No. 12873, Oct. 20, 1993, 58 F.R. 54911, as amended by Ex. Ord. No. 12995, Mar. 25, 1996, 61 F.R. 13645, which directed Executive agencies to incorporate waste prevention and recycling in daily operations and work and to acquire and use environmentally preferable products and services and which created a Federal Environmental Executive and established high-level Environmental Executive positions within each agency, was revoked by Ex. Ord. No. 13101, § 901, Sept. 14, 1998, 63 F.R. 49651, formerly set out below.

EXECUTIVE ORDER NO. 13101

Ex. Ord. No. 13101, Sept. 14, 1998, 63 F.R. 49643, which directed executive agencies to incorporate waste prevention and recycling policies in their daily operations and created a Steering Committee, a Federal Environmental Executive, a Task Force, and Agency Environmental Executive positions responsible for ensuring the implementation of this order, was revoked by Ex. Ord. No. 13423, § 11(a)(i), Jan. 24, 2007, 72 F.R. 3923, set out in a note under section 4321 of this title.

§ 6962. Federal procurement

(a) Application of section

Except as provided in subsection (b) of this section, a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds \$10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was \$10,000 or more.

(b) Procurement subject to other law

Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6964 of this title (as promulgated before October 21, 1976, under comparable provisions of prior law) shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

(c) Requirements

(1) After the date specified in applicable guidelines prepared pursuant to subsection (e) of this

section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) of this section practicable), consistent with maintaining a satisfactory level of competition, considering such guidelines. The decision not to procure such items shall be based on a determination that such procurement items—

(A) are not reasonably available within a reasonable period of time;

(B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(C) are only available at an unreasonable price. Any determination under subparagraph (B) shall be made on the basis of the guidelines of the National Institute of Standards and Technology in any case in which such material is covered by such guidelines.

(2) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

(3)(A) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting officers shall require that vendors:

(i) certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements and

(ii) estimate the percentage of the total material utilized for the performance of the contract which is recovered materials.

(B) Clause (ii) of subparagraph (A) applies only to a contract in an amount greater than \$100,000.

(d) Specifications

All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall—

(1) as expeditiously as possible but in any event no later than eighteen months after November 8, 1984, eliminate from such specifications—

(A) any exclusion of recovered materials and

(B) any requirement that items be manufactured from virgin materials; and

(2) within one year after the date of publication of applicable guidelines under subsection (e) of this section, or as otherwise specified in such guidelines, assure that such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item.

(e) Guidelines

The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the Na-

tional Institute of Standards and Technology), and the Public Printer, shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section, and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1) of this section; and

(2) set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and with respect to certification by vendors of the percentage of recovered materials used,

and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

(A) the availability of such items;

(B) the impact of the procurement of such items by procuring agencies on the volume of solid waste which must be treated, stored or disposed of;

(C) the economic and technological feasibility of producing and using such items; and

(D) other uses for such recovered materials.

(f) Procurement of services

A procuring agency shall, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

(g) Executive Office

The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the requirements of this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d) of this section.

(h) "Recovered materials" defined

As used in this section, in the case of paper products, the term "recovered materials" includes—

(1) postconsumer materials such as—

(A) paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(B) all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) manufacturing, forest residues, and other wastes such as—

(A) dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(B) finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(C) fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(D) wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and

(E) fibers recovered from waste water which otherwise would enter the waste stream.

(i) Procurement program

(1) Within one year after the date of publication of applicable guidelines under subsection (e) of this section, each procuring agency shall develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

(2) Each affirmative procurement program required under this subsection shall, at a minimum, contain—

(A) a recovered materials preference program;

(B) an agency promotion program to promote the preference program adopted under subparagraph (A);

(C) a program for requiring estimates of the total percentage of recovered material utilized in the performance of a contract; certification of minimum recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications; and

(D) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

In the case of paper, the recovered materials preference program required under subparagraph (A) shall provide for the maximum use of the post consumer recovered materials referred to in subsection (h)(1) of this section.

(3) In developing the preference program, the following options shall be considered for adoption:

(A) Case-by-Case Policy Development: Subject to the limitations of subsection (c)(1)(A)

through (C) of this section, a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the post consumer recovered materials referred to in subsection (h)(1) of this section). Subject to such limitations, agencies may make an award to a vendor offering items with less than the maximum recovered materials content.

(B) Minimum Content Standards: Minimum recovered materials content specifications which are set in such a way as to assure that the recovered materials content (and in the case of paper, the content of post consumer materials referred to in subsection (h)(1) of this section) required is the maximum available without jeopardizing the intended end use of the item, or violating the limitations of subsection (c)(1)(A) through (C) of this section.

Procuring agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the affirmative procurement program.

(Pub. L. 89-272, title II, §6002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2822; amended Pub. L. 95-609, §7(n), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §22, Oct. 21, 1980, 94 Stat. 2346; Pub. L. 97-375, title I, §102, Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98-616, title V, §501(a)-(e), Nov. 8, 1984, 98 Stat. 3274-3276; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102-393, title VI, §630, Oct. 6, 1992, 106 Stat. 1773; Pub. L. 103-355, title I, §1554(1), title IV, §4104(e), Oct. 13, 1994, 108 Stat. 3300, 3342.)

CODIFICATION

Pub. L. 102-393, title VI, §630, Oct. 6, 1992, 106 Stat. 1773, which directed that this title be amended by adding a new section 6962j, relating to a preference for recycled toner cartridges, and which had been executed by adding the provisions of purported new section as subsec. (j) of this section, to reflect the probable intent of Congress, was repealed by Pub. L. 103-355, title I, §1554(1), Oct. 13, 1994, 108 Stat. 3300. Similar provisions were contained in Pub. L. 103-123, title IV, §401, Oct. 28, 1993, 107 Stat. 1238, prior to repeal by Pub. L. 103-355, title I, §1554(2), Oct. 13, 1994, 108 Stat. 3300.

AMENDMENTS

1994—Subsec. (c)(3). Pub. L. 103-355, §4104(e), designated existing provisions as subpar. (A), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (j). Pub. L. 103-355, §1554(1), struck out subsec. (j). See Codification note above.

1992—Subsec. (j). Pub. L. 102-393 added subsec. (j). See Codification note above.

1988—Subsecs. (c)(1)(C), (e). Pub. L. 100-418 substituted "National Institute of Standards and Technology" for "Bureau of Standards".

1984—Subsec. (c)(1). Pub. L. 98-616, §501(c), inserted "(and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) of this section practicable)".

Subsec. (d)(1). Pub. L. 98-616, §501(e), substituted "eighteen months after November 8, 1984" for "five years after October 21, 1976".

Subsec. (e). Pub. L. 98-616, §501(b)(2), substituted "for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985" for "for at least three product categories, including paper, by May 1, 1981, and for two additional product categories, includ-

ing construction materials, by September 30, 1982.” in provisions following par. (2).

Subsec. (e)(1). Pub. L. 98-616, §501(b)(1), inserted “, and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1) of this section”.

Subsec. (g). Pub. L. 98-616, §501(d), substituted “the requirements of” for “the policy expressed in” and inserted “, and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d) of this section”.

Subsecs. (h), (i). Pub. L. 98-616, §501(a), added subsecs. (h) and (i).

1982—Subsec. (g). Pub. L. 97-375 struck out provision requiring the Office of Procurement Policy to report annually to Congress on actions taken by Federal agencies and the progress made in the implementation of the policy expressed in this section.

1980—Subsec. (c)(1). Pub. L. 96-482, §22(1), (2), in provision preceding subpar. (A), substituted “After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any item designated in such guidelines shall procure such” for “After two years after October 21, 1976, each procuring agency shall procure”, and in subpar. (C), “subparagraph (B)” for “clause (B)”.

Subsec. (c)(2). Pub. L. 96-482, §22(3), substituted “energy or fuels derived from solid waste” for “recovered material and recovered-material-derived fuel”.

Subsec. (c)(3). Pub. L. 96-482, §22(4), substituted subpars. (A) and (B) for provision requiring certification of the percentage of the total material utilized for the performance of the contract which is recovered materials.

Subsec. (d). Pub. L. 96-482, §22(5), in par. (1), substituted provision requiring Federal agencies to eliminate from specifications as expeditiously as possible, but in no event later than 5 years after Oct. 21, 1976, any exclusion of recovered materials and any requirement that items be manufactured from virgin materials for provision that Federal agencies in reviewing specifications, ascertain whether those specifications violate prohibitions in par. (2)(A) to (C), with such review undertaken not later than 18 months after Oct. 21, 1976, and in par. (2), substituted provision that Federal agencies act within 1 year from publication of applicable guidelines under subsec. (e) of this section for provision that in drafting or revising specifications after Oct. 21, 1976, any exclusion of recovered materials be eliminated and specifications not require the item to be manufactured from virgin materials.

Subsec. (e). Pub. L. 96-482, §22(6), designated provision relating to requirements of guidelines as cl. (2) and subpars. (A) and (C), added cl. (1), subpars. (B) and (C), and provision preceding subpar. (A), and struck out provision requiring information on source of supply.

1978—Subsec. (c). Pub. L. 95-609, §7(n)(1), (2), redesignated subpar. (1)(A) as par. (1), subpars. (1)(B) and (C) as pars. (2) and (3), respectively, and cls. (i) to (iii) of former subpar. (1)(A) as subpars. (A) to (C), respectively, of par. (1), and in par. (3), as so redesignated, inserted “After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section,” before “contracting”.

Subsec. (e). Pub. L. 95-609, §7(n)(3), inserted provision dealing with certification by vendors of the materials used.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of Title 10, Armed Forces.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protec-

tion Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6963. Cooperation with Environmental Protection Agency

(a) General rule

All Federal agencies shall assist the Administrator in carrying out his functions under this chapter and shall promptly make available all requested information concerning past or present Agency waste management practices and past or present Agency owned, leased, or operated solid or hazardous waste facilities. This information shall be provided in such format as may be determined by the Administrator.

(b) Information relating to energy and materials conservation and recovery

The Administrator shall collect, maintain, and disseminate information concerning the market potential of energy and materials recovered from solid waste, including materials obtained through source separation, and information concerning the savings potential of conserving resources contributing to the waste stream. The Administrator shall identify the regions in which the increased substitution of such energy for energy derived from fossil fuels and other sources is most likely to be feasible, and provide information on the technical and economic aspects of developing integrated resource conservation or recovery systems which provide for the recovery of source-separated materials to be recycled or the conservation of resources. The Administrator shall utilize the authorities of subsection (a) of this section in carrying out this subsection.

(Pub. L. 89-272, title II, §6003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2823; amended Pub. L. 96-482, §32(g), Oct. 21, 1980, 94 Stat. 2355.)

AMENDMENTS

1980—Pub. L. 96-482 designated existing provision as subsec. (a), substituted provision that information be provided in a format determined by the Administrator for provision that information be furnished on a reimbursable basis, and added subsec. (b).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6964. Applicability of solid waste disposal guidelines to Executive agencies

(a) Compliance

(1) If—

(A) an Executive agency (as defined in section 105 of title 5) or any unit of the legislative branch of the Federal Government has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste management activities, or

(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste management activities,

then such agency shall insure compliance with the guidelines recommended under section 6907 of this title and the purposes of this chapter in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

(2) Each Executive agency or any unit of the legislative branch of the Federal Government which conducts any activity—

(A) which generates solid waste, and

(B) which, if conducted by a person other than such agency, would require a permit or license from such agency in order to dispose of such solid waste,

shall insure compliance with such guidelines and the purposes of this chapter in conducting such activity.

(3) Each Executive agency which permits the use of Federal property for purposes of disposal of solid waste shall insure compliance with such guidelines and the purposes of this chapter in the disposal of such waste.

(4) The President or the Committee on House Oversight of the House of Representatives and the Committee on Rules and Administration of the Senate with regard to any unit of the legislative branch of the Federal Government shall prescribe regulations to carry out this subsection.

(b) Licenses and permits

Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Administrator to insure compliance with guidelines recommended under section 6907 of this title and the purposes of this chapter.

(Pub. L. 89-272, title II, §6004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2823; amended Pub. L. 95-609, §7(o), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 96-482, §23, Oct. 21, 1980, 94 Stat. 2347; Pub. L. 104-186, title II, §222(2), Aug. 20, 1996, 110 Stat. 1751.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254e of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104-186 substituted “House Oversight” for “House Administration”.

1980—Subsec. (a)(1)(A). Pub. L. 96-482, §23(1), inserted reference to any unit of the legislative branch of the Federal Government.

Subsec. (a)(2). Pub. L. 96-482, §23(2), required any unit of the legislative branch of the Federal Government to insure compliance with solid waste disposal guidelines.

Subsec. (a)(4). Pub. L. 96-482, §23(3), required House Committee on House Administration and Senate Committee on Rules and Administration with regard to any unit of the legislative branch of the Federal Government to prescribe implementing regulations.

1978—Subsec. (a)(1). Pub. L. 95-609, §7(o)(1), (2), substituted “management” for “disposal” in two places.

Subsec. (b). Pub. L. 95-609, §7(o)(3), substituted “Administrator” for “Secretary”.

CHANGE OF NAME

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6965. Chief Financial Officer report

The Chief Financial Officer of each affected agency shall submit to Congress an annual report containing, to the extent practicable, a detailed description of the compliance activities undertaken by the agency for mixed waste streams, and an accounting of the fines and penalties imposed on the agency for violations involving mixed waste.

(Pub. L. 102-386, title I, §110, Oct. 6, 1992, 106 Stat. 1516.)

CODIFICATION

Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§ 6966. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete

(a) Definitions

In this section:

(1) Agency head

The term “agency head” means—

(A) the Secretary of Transportation; and

(B) the head of any other Federal agency that, on a regular basis, procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Cement or concrete project

The term “cement or concrete project” means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

(A) involves the procurement of cement or concrete; and

(B) is carried out, in whole or in part, using Federal funds.

(3) Recovered mineral component

The term “recovered mineral component” means—

(A) ground granulated blast furnace slag, excluding lead slag;

(B) coal combustion fly ash; and

(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated

as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) Implementation of requirements

(1) In general

Not later than 1 year after August 8, 2005, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of August 8, 2005 (including guidelines under section 6962 of this title) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) Priority

In carrying out paragraph (1), an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) Federal procurement requirements

The Administrator and each agency head shall carry out this subsection in accordance with section 6962 of this title.

(c) Full implementation study

(1) In general

The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which procurement requirements, when fully implemented in accordance with subsection (b) of this section, may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) Matters to be addressed

The study shall—

(A) quantify—

- (i) the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of procurement requirements; and
- (ii) the energy savings and environmental benefits associated with the substitution;

(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from the law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

(3) Report

Not later than 30 months after August 8, 2005, the Administrator shall submit to Congress a report on the study.

(d) Additional procurement requirements

Unless the study conducted under subsection (c) of this section identifies any effects or other problems described in subsection (c)(2)(C)(iii) of this section that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the date on which the report under subsection (c)(3) of this section is submitted, take additional actions under this chapter to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects—

(1) to realize more fully the energy savings and environmental benefits associated with increased substitution; and

(2) to eliminate barriers identified under subsection (c)(2)(B) of this section.

(e) Effect of section

Nothing in this section affects the requirements of section 6962 of this title (including the guidelines and specifications for implementing those requirements).

(Pub. L. 89-272, title II, §6005, as added Pub. L. 109-58, title I, §108(a), Aug. 8, 2005, 119 Stat. 612.)

CODIFICATION

Another section 6005 of Pub. L. 89-272 is classified to section 6966a of this title.

§ 6966a. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete

(a) Definitions

In this section:

(1) Agency head

The term “agency head” means—

- (A) the Secretary of Transportation; and
- (B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Cement or concrete project

The term “cement or concrete project” means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

- (A) involves the procurement of cement or concrete; and
- (B) is carried out in whole or in part using Federal funds.

(3) Recovered mineral component

The term “recovered mineral component” means—

- (A) ground granulated blast furnace slag other than lead slag;
- (B) coal combustion fly ash;
- (C) blast furnace slag aggregate other than lead slag aggregate;

(D) silica fume; and

(E) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) Implementation of requirements

(1) In general

Not later than 1 year after August 10, 2005, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of August 10, 2005 (including guidelines under section 6962 of this title) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) Priority

In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) Conformance

The Administrator and each agency head shall carry out this subsection in accordance with section 6962 of this title.

(c) Full implementation study

(1) In general

The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b) of this section, may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) Matters to be addressed

The study shall—

(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from

greater substitution of recovered mineral component in those cement or concrete projects.

(3) Report

Not later than 30 months after August 10, 2005, the Administrator shall submit to Congress a report on the study.

(d) Additional procurement requirements

Unless the study conducted under subsection (c) of this section identifies any effects or other problems described in subsection (c)(2)(C)(iii) of this section that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (c)(3) of this section, take additional actions authorized under this chapter to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

(2) eliminate barriers identified under subsection (c) of this section.

(e) Effect of section

Nothing in this section affects the requirements of section 6962 of this title (including the guidelines and specifications for implementing those requirements).

(Pub. L. 89-272, title II, §6005, as added Pub. L. 109-59, title VI, §6017(a), Aug. 10, 2005, 119 Stat. 1888.)

CODIFICATION

Another section 6005 of Pub. L. 89-272 is classified to section 6966 of this title.

§ 6966b. Use of granular mine tailings

(a) Mine tailings

(1) In general

Not later than 180 days after August 10, 2005, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as “chat”, for—

(A) cement or concrete projects; and

(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

(2) Requirements

In establishing criteria under paragraph (1), the Administrator shall consider—

(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

(B) any environmental and public health risks and benefits derived from the removal,

transportation, and use in transportation projects of granular mine tailings.

(3) Public participation

In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

(4) Applicability of criteria

On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

(b) Effect of sections

Nothing in this section or section 6966a of this title affects any requirement of any law (including a regulation) in effect on August 10, 2005.

(Pub. L. 89-272, title II, §6006, as added Pub. L. 109-59, title VI, §6018(a), Aug. 10, 2005, 119 Stat. 1890.)

REFERENCES IN TEXT

Section 6966a of this title, referred to in subsec. (b), was in the original "section 6005" meaning section 6005 of Pub. L. 89-272, which was translated as meaning the section 6005 of Pub. L. 89-272 as added by section 6017(a) of Pub. L. 109-59, to reflect the probable intent of Congress.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

§ 6971. Employee protection

(a) General

No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter or of any applicable implementation plan.

(b) Remedy

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall

make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator or subject to judicial review under this chapter.

(c) Costs

Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Exception

This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of this chapter.

(e) Employment shifts and loss

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provisions of this chapter and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or author-